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SAN LUIS OBISPO SUPERIOR COURT
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Attorneys for Plaintiff APULEYO ARROYO, as representative of the State of California and the Labor and Workforce Development Agency, and all other current and former similarly aggrieved employees.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN LUIS OBISPO COUNTY**

APULEYO ARROYO, on behalf of himself
and all others aggrieved employees,

Plaintiff,

v.

G. WIEMANN CONSTRUCTION, INC., a
California Corporation; GREGORY BRIAN
WIEMANN, an individual; and DOES 1- 50,
Inclusive,

Defendant,

Case No. 21CVP-0200

COMPLAINT

1. Civil Penalties under the Private Attorneys General Act (PAGA)

Plaintiff, APULEYO ARROYO, as a representative of the State of California and the Labor and Workforce Development Agency (LWDA), and on behalf of himself, and all other current and former similarly aggrieved employees, complains and alleges as follows:

1 **INTRODUCTION**

2 1. This is a representative action brought by Plaintiff, as a representative of the State
3 of California and the LWDA, and on behalf of himself and other similarly aggrieved employees,
4 to collect civil penalties for Defendants' Labor Code violations.

5 2. Defendants and employer, G. WIEMANN CONSTRUCTION, INC. and
6 GREGORY BRIAN WIEMANN (collectively referred to as "Defendants") violated numerous
7 wage and hour laws with respect to Plaintiff and other aggrieved employees by failing to provide,
8 for example: accurate and itemized wages statements, payment for all hours worked (including
9 regular wages and overtime), failure to provide a minimum wage lawful meal periods, lawful
10 rest periods, timely payment during employment, failure to reimburse for expenses incurred
11 during the course and scope of employment, and payment upon separation of employment.

12 **PARTIES**

13 **The Plaintiff**

14 3. Plaintiff is, and at all times herein mentioned was, a resident of the County of San
15 Luis Obispo. Similarly aggrieved, former and/or current employees are those non-exempt
16 employees employed by Defendants during the relevant time period who were subject to the
17 same wage and hour policies/practices as Plaintiff, and thereby suffered similar or substantially
18 similar violations ("Aggrieved Employees").

19 **The Defendant**

20 4. Defendant G. WIEMANN CONSTRUCTION, INC. is a corporation which, at all
21 relevant times mentioned herein, existing, doing business and employing individuals in the
22 County of San Luis Obispo, State of California.

23 5. Defendant GREGORY BRIAN WIEMANN, an individual, at all relevant times
24 mentioned herein, resided within the State of California and the County of San Luis Obispo.
25 Plaintiff is informed and believes, and based thereon alleges, that Defendant Gregory Brian
26 Wiemann was the actual employer and/or was a "person acting on behalf of the employer" and a
27 managing agent within the meaning of California Labor Code § 558.1.

28 6. Plaintiff is further informed and thereon alleges, that Defendants, and each of

1 them, exercised control over Plaintiff and Aggrieved Employees' wages, hours, and working
2 conditions.

3 7. The true names and capacities, whether individual, corporate, associate, or
4 otherwise of Defendants named herein as DOES 1-50, inclusive, are unknown to Plaintiff at this
5 time and therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to
6 amend this Complaint to insert the true names and capacities of said Defendants when the same
7 become known to Plaintiff. Plaintiff is informed and believes and thereupon alleges that each of
8 the fictitiously named Defendants are responsible for the wrongful acts alleged herein and is
9 therefore liable to Plaintiff as alleged hereinafter.

10 8. Plaintiff is informed and believes, and based thereupon alleges, that at all times
11 relevant hereto, Defendants, and each of them, were the agents, employees, managing agents,
12 supervisors, conspirators, parent corporation, joint employers, alter ego, and/or joint ventures of
13 the other Defendants, and each of them, and in doing the things alleged herein, were acting at
14 least in part within the course and scope of said agency, employment, conspiracy, joint
15 employment, alter ego status, and/or joint venture and with the permission and consent of each of
16 the other Defendants.

17 9. Plaintiff is informed and believes, and based thereupon alleges, that Defendants,
18 and each of them, including those Defendants named DOES 1-50, acted in concert with one
19 another to commit the wrongful acts alleged therein, and aided, abetted, incited, compelled,
20 and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do so.
21 Plaintiff is further informed and believes, and based thereupon alleges, that the Defendants, and
22 each of them, including those Defendants named as DOES 1-50, formed and executed a
23 conspiracy or common plan pursuant to which they would commit the unlawful acts alleged
24 herein, with all such acts alleged herein done as part of and pursuant to said conspiracy, intended
25 to and actually causing Plaintiff harm.

26 10. Whenever and wherever reference is made in this Complaint to any act or failure
27 to act by a defendant or co-defendant, such allegations and references shall also be deemed to
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mean the acts and/or failures to act by each defendant acting individually, jointly and severally.

JURISDICTION AND VENUE

11. Venue is proper in San Luis Obispo County, because Defendants maintain its locations and transacts business in this county, the obligations and liability primarily arise in this county, and work was primarily performed by Plaintiff and other aggrieved employees in this county.

12. The California Superior Court has jurisdiction over this matter. The individual claims are under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for federal court and PAGA penalties cannot be aggregated to meet the minimum jurisdictional amount required for diversity removal. Further, there is no federal question at issue as the issues herein are based solely on California statutes and law, including, but not limited to, the California Labor Code, Industrial Welfare Commission Wage Orders, California Code of Civil Procedure, and California Rules of Court.

GENERAL ALLEGATIONS

13. Defendants employed Plaintiff as a foreman from on or about February 1, 2020, to April 1, 2021.

14. Defendants would direct Plaintiff and Aggrieved Employees to report and work at different job sites.

15. At all relevant times herein, Defendants employed Plaintiff and other Aggrieved Employees as non-exempt employees. Aggrieved Employees mean and refers to all persons who worked for Defendants as all non-exempt employees who worked for Defendants at any time during the specified relevant time period and were subject to the same wage and hour practices and policies as Plaintiff.

16. On many occasions, Plaintiff and aggrieved employees would work more than 8 hours per day or 40 hours per week without overtime pay. Plaintiff and similarly Aggrieved Employees would not receive all compensable work time or their work time was illegally rounded.

1 17. Defendants regularly did not have enough employees to provide sufficient
2 coverage to maintain their business operations so Plaintiff and similarly aggrieved employees
3 could not take complete, timely and uninterrupted meal and rest breaks.

4 18. In an effort to curtail labor costs, Defendants regularly and consistently did not
5 have enough staff employees to provide sufficient coverage to both maintain their business
6 operations and provide legally mandated meal and rest periods, despite reasonably foreseeable
7 work load, so Plaintiff and similarly Aggrieved Employees could not take complete, timely and
8 uninterrupted meal and rest breaks because Defendants prioritized completion of daily duties
9 ahead of meal and rest period compliance.

10 19. Pursuant to Labor Code section 2699, subdivision (a), any provision of the Labor
11 Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its
12 departments, divisions, commissions, boards, agencies or employees for violation of the code
13 may, as an alternative, be recovered through a civil action brought by an aggrieved employee on
14 behalf of himself or herself and other current or former employees pursuant to the procedures
15 specified in Labor Code section 2699.3.

16 20. For all provisions of the Labor Code except those for which a civil penalty is
17 specifically provided, Labor Code section 2699, subdivision (f) imposes upon Defendant a
18 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the
19 initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period
20 for each subsequent pay period in which Defendant violated these provisions of the Labor Code.

21 21. Defendants' conduct during the PAGA period with respect to Plaintiff and the
22 Aggrieved Employees violates numerous Labor Code sections as detailed herein.

23 22. Plaintiff alleges that Defendants have engaged in a systematic pattern of wage
24 and hour violations under the California Labor Code and IWC Wage Orders.

25 23. At all relevant times herein, Defendants employed Plaintiff and other Aggrieved
26 Employees as non-exempt employees.

27 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants
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1 knew or should have known that Plaintiff and Aggrieved Employees were entitled to receive
2 wages for all hours worked, including the applicable minimum, regular, and overtime wages,
3 and that they were not receiving all wages earned for work that was required to be performed. In
4 violation of the Labor Code and IWC Wage Orders, Defendants failed to pay Plaintiff and
5 Aggrieved Employees for all hours worked. Accordingly, Defendants failed to pay Plaintiff and
6 Aggrieved Employees all earned minimum, regular, and/or overtime compensation.

7 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 knew or should have known that Plaintiff and Aggrieved Employees were entitled to receive all
9 required meal periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved
10 Employees' regular rate of pay when they did not receive a timely, uninterrupted off-duty meal
11 period. In violation of the Labor Code and IWC Wage Orders, Defendants had a pattern, practice,
12 and policy of not providing timely meal periods. Defendants failed to pay an additional hour of
13 pay to Plaintiff and Aggrieved Employees for late meal periods. As a result of Defendants'
14 unlawful policy and practice, Plaintiff and Aggrieved Employees did not receive all meal periods
15 or payment of one (1) additional hour of pay at Plaintiff's and Aggrieved Employees' regular
16 rate of pay when they did not receive a timely, uninterrupted 30 minute off-duty meal period.

17 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 knew or should have known that Plaintiff and Aggrieved Employees were entitled to receive all
19 required rest periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved
20 Employees' regular rate of pay when they did not receive a timely, uninterrupted off-duty rest
21 period. In violation of the Labor Code and IWC Wage Orders, Defendant had a pattern, practice,
22 and policy of not providing timely rest periods. Defendants failed to pay an additional hour of
23 pay to Plaintiff and Aggrieved Employees for each rest period that was not provided or was
24 interrupted. As a result of Defendants' unlawful policy and practice, Plaintiff and Aggrieved
25 Employees did not receive all required rest periods or payment of one (1) additional hour of pay
26 at Plaintiff's and Aggrieved Employees' regular rate of pay when they did not receive a timely,
27 uninterrupted 10 minute off-duty rest period.
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27. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew or should have known that Plaintiff and certain Aggrieved Employees were entitled to timely payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiff and certain Aggrieved Employees did not receive payment of all wages due, within permissible time periods, upon separation of employment.

28. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and aggrieved employees were entitled to receive itemized wage statements that accurately showed their actual hours worked, total hours worked, number of hours worked at each hourly rate, gross and net wages earned, and correct employer information in accordance with California law. In violation of the Labor Code, Plaintiff and aggrieved employees were not provided with accurate itemized wage statements that accurately reported their gross and net wages earned, total hours worked, each applicable rate of pay in effect during the pay period with the corresponding number of hours worked, and the address of the legal entity that is the employer, among other things.

29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Defendants were required to maintain accurate records of the hours worked by Plaintiff and Aggrieved employees. In violation of the Labor Code, Defendant failed to maintain accurate records of hours worked by Plaintiff and aggrieved employees due to its unfair rounding practices, among other things.

FIRST CAUSE OF ACTION

**(Civil Penalties Under the Private Attorneys General Act,
Labor Code § 2699 et seq., For Violations of the Labor Code)**

30. By this complaint, Plaintiff brings this case as a representative action seeking penalties for himself, the Aggrieved Employees, and the State of California in a representative capacity, as provided by the PAGA, Labor Code sections 2698 et seq. Plaintiff is an aggrieved employee who was employed by Defendants and subject to at least one of the Labor Code violations set forth in Labor Code section 2699.5. Plaintiff specifically alleged the following in

his notice to the LWDA and Defendants: violation of Labor Code sections 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198.

31. Under Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause of action under PAGA only after giving the LWDA and the employer notice of the Labor Code sections alleged to have been violated, and after receiving notice from the LWDA of its intention not to investigate, or after 65 days have passed without notice from the LWDA.

32. Prior to filing this complaint, on May 13, 2021, Plaintiff gave written notice of the specific provisions alleged to have been violated, including the facts and theories to support the alleged violations, as required by Labor Code section 2699.3. The written notice was given via certified mail to Defendants, and the LWDA by electronically filing the notice via the Department of Industrial Relations website. Plaintiff was given an LWDA case number of LWDA-CM-832169-21. A true and correct copy of Plaintiff's notice to the LWDA and Defendant(s), dated May 13, 2021 is attached hereto as **Exhibit A**.

33. The LWDA has not provided Plaintiff with any notice that it intends to investigate the violations as alleged in Plaintiff's May 13, 2021, notice, and more than 65 calendar days have elapsed since the postmark date on the notice.

34. California Labor Code §§2698-2699.5, in relevant part provides, "any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency...for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3."

35. As an aggrieved employee, Plaintiff brings this civil action to recover civil penalties for Defendants' Labor Code violations.

FIRST VIOLATION

(Failure to Provide Meal Periods, in Violation of Labor Code Section 512)

36. Under California Labor Code §512(a), "An employer may not employ an

1 employee for a work period of more than five hours per day without providing the employee
2 with a meal period of not less than 30 minutes, except that if the total work period per day of the
3 employee is no more than six hours, the meal period may be waived by mutual consent of both
4 the employer and employee.”

5 37. Defendants violated Labor Code § 512 by failing to provide Plaintiff, and other
6 qualifying employees who worked shifts of greater than five hours, meal periods within the first
7 five hours of the shifts worked. Defendants failed to pay Plaintiff one hour’s pay at Plaintiff’s
8 regular rate of pay for each day Defendants failed to provide a meal period in compliance with
9 section 512.

10 **SECOND VIOLATION**

11 **(Failure to Provide Rest Periods, in Violation of Labor Code Section 226.7)**

12 38. Under California Labor Code §226.7(b), “An employer shall not require an
13 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
14 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission”

15 39. Industrial Welfare Commission (IWC) provides, “Every employer shall authorize
16 and permit all employees to take rest periods, which insofar as practicable shall be in the middle
17 of each work period. The authorized rest period time shall be based on the total hours worked
18 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

19 40. Defendants failed to authorize and permit Plaintiff and other employee to take
20 rest periods and mandated by the Wage Order.

21 41. Under §226.7(c), an employer who violates §226.7(b), “...shall pay the employee
22 one additional hour of pay at the employee’s regular rate of compensation for each workday that
23 the meal or rest or recovery period is not provided.”

24 42. Defendants failed to pay Plaintiff and other employees who were not provided
25 rest periods one hour of pay at their regular rate of pay.

26 **THIRD VIOLATION**

27 **(Failure to Provide Complete and Accurate Wage Statements,**

1 **in Violation of Labor Code Section 226)**

2 43. Under California Labor Code §226(a), an employer is legally obligated to provide
3 its employees, semi-monthly or at the time of payment of wages, “an accurate itemized statement
4 in writing...”

5 44. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
6 for Defendant’s Labor Code violations alleged herein, as well as attorney’s fees and costs, under
7 Labor Code § 2699.

8 **FOURTH VIOLATION**

9 **(Failure to Pay Overtime Wages)**

10 45. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Orders, an
11 employer is required to compensate employees for all overtime, which is calculated at one and
12 one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours per
13 day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive
14 workday, with double time for all hours worked in excess of twelve (12) hours in any workday
15 and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in
16 any workweek.

17 46. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
18 for Defendant’s Labor Code violations alleged herein, as well as attorney’s fees and costs, under
19 Labor Code § 2699.

20 **FIFTH VIOLATION**

21 **(Failure to Pay Minimum Wages)**

22 47. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Orders,
23 payment to an employee of less than the applicable minimum wage for all hours worked in a
24 payroll period is unlawful.

25 48. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
26 for Defendant’s Labor Code violations alleged herein, as well as attorney’s fees and costs, under
27 Labor Code § 2699.
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1 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
2 the employer.

3 54. Defendants failed to indemnify Plaintiff and Aggrieved Employees for all
4 necessary expenditures or losses incurred by Plaintiff and aggrieved employees in direct
5 consequence of the discharge of their duties. Specifically, Defendants failed to indemnify
6 Plaintiff and Aggrieved Employees for expenditures they incurred on their behalf, including,
7 but not limited to use of their personal mobile phones and personal vehicles to conduct company
8 business. In violation of the Labor Code, Defendant failed to reimburse Plaintiff and Aggrieved
9 Employees for these business-related expenditures.

10 55. Furthermore, Plaintiff and Aggrieved Employees were required to use their
11 personal cellphones in the course and scope of their employment to carry out their employment
12 duties, including without limitation contacting clients and communicating with their supervisors
13 for instructions or to provide status reports. Plaintiff and Aggrieved Employees were not
14 provided reimbursement for the reasonable usage of their personal cellphone by Defendants.

15 56. By virtue of Defendants' unlawful actions, Plaintiff and the Aggrieved
16 Employees have suffered, and will continue to suffer, damages in amounts which are presently
17 unknown, but will be ascertained according to proof at trial.

18 57. Plaintiff seeks recovery of civil penalties individually, on behalf of the Aggrieved
19 Employees and the State of California for violations of Labor Code section 2802 during the
20 PAGA period, in a sum as provided by the Labor Code and/or other statutes.

21 58. Plaintiff, individually and on behalf of the aggrieved employees and the State of
22 California also seeks attorneys' fees and costs pursuant to Labor Code section 2699, subdivision
23 (g) and Code of Civil Procedure section 1021.5.

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1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff prays for the following relief:

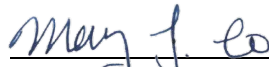
- 3 1. For penalties in an amount according to proof;
4 2. For reasonable attorney's fees and costs pursuant to the PAGA; and
5 3. For such other and further relief as this Court may deem just and proper.

6
7 Respectfully Submitted,

8 Dated: July 29, 2021

WORK LAWYERS, PC

9
10
11 By:



12 May T. To, Esq.
13 Attorney for Plaintiff
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Exhibit A

7020 2450 0002 0253 6176

Gregory Brian Wiemann
3400 Stage Springs Road
Creston, CA 93432

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